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No. 84-1446

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

TACA INTERNATIONAL AIRLINES, S.A.,
Petitioner,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, AFL-CIO,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF OF AIR LINE PILOTS ASSOCIATION, INTERNATIONAL IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Courts below properly rejected defendant airline's attempt to excuse its conceded, multiple violations of the Railway Labor Act and fundamental principles of American labor policy on the basis of an Air Transport Agreement between the United States and El Salvador, whose express terms require adherence to U.S. law and signal no intent to replace or suspend American labor law or to oust the jurisdiction of U.S. Courts to resolve a labor dispute between private parties?

2. Whether the Courts below properly rejected defendant airline's attempt to excuse its multiple Railway Labor Act violations on the basis of the act of state doctrine or foreign compulsion defense when resolution of this private party labor dispute did not require adjudication of the laws, conduct, or motivations of El Salvador, defendant violated American law on American soil, vital American interests far outweighed any Salvadoran concerns, the equities tipped heavily towards plaintiff, and no sensitive international relations were implicated?

PARTIES TO THE PROCEEDINGS

1. Air Line Pilots Association, International, AFL-CIO.

2. TACA International Airlines, S.A.

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BRIEF OF AIR LINE PILOTS ASSOCIATION, INTERNATIONAL IN OPPOSITION

STATUTORY PROVISIONS

The statutory provisions involved in this case are sections 2, First, Second, Third, Fourth, Seventh, 5, First, 6 and 201 of the Railway Labor Act, 45 U.S.C. §§ 152, 155, 156, 181. The text of these provisions are set forth in full in the Supplemental Appendix.

STATEMENT OF THE CASE

A. The Air Line Pilots Association, International ("ALPA"), bargaining representative for all pilots employed by TACA International Airlines, S.A. ("TACA"), commenced this action when, in the midst of collective

bargaining negotiations under the Railway Labor Act (the "Act"), 45 U.S.C. § 151 *et seq.*, TACA announced that it would unilaterally transfer its pilots from New Orleans to El Salvador, withdraw its recognition of ALPA, terminate its collective bargaining agreement with ALPA, and implement new, inferior wages and working conditions. A.4, 29.[1]

Since 1968, TACA, an air carrier fully subject to the Act, 45 U.S.C. § 181, A.19, 14, and ALPA have been parties to collective bargaining agreements under the Act. A.5. More than one-half of TACA's pilots live in the United States, A.5; nearly one-half, including the most senior, are American citizens, A.27; R. Vol. 3, pp. 53, 62-64; and all, regardless of nationality, residence or seniority, are represented by ALPA, A.5, and have been based in New Orleans since 1949 when TACA first instituted service between New Orleans and El Salvador. A.5, 14.

In the fall of 1983, ALPA and TACA commenced negotiations in New Orleans, "looking to the amendment and continuation of the current agreement," A.6, 27-28, executed October 11, 1979 and amendable December 31, 1983. *Id.* TACA disavowed any intent to shift the pilot base from El Salvador, R. Vol. 3, pp. 33-34, and acknowledged, in accordance with the Act, that if an agreement was not concluded by the amendable date, the terms of the existing contract would continue in full force and effect. ALPA Ex. 6, p. 2. The January, 1984 flight schedule, ALPA Ex. 7, posted on December 15, 1983, confirmed that all flights would originate and terminate at New Orleans, as they had since at least 1968. A.28-29.[2]

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[1] Citations of Opinions and Orders of the Courts below are to pertinent pages in Petitioner's Appendix ("A"). Other citations are to the Appendix or to references in the record ("R.") below.

[2] TACA's contrary assertions as to the origination and termination of flights, Petition ("Pet."), pp. 3, 17, are rejected by the record.

However, at a meeting in El Salvador on December 21, 1983, TACA's top officials suddenly announced that the pilot base would be moved to El Salvador, the collective bargaining agreement would be supplanted by individual contracts, and that, as far as TACA was concerned, ALPA and the collective bargaining agreement were "dead." A.7, 28; R. Vol. 3, pp. 107-110. Immediately thereafter, TACA posted a revised January flight schedule with flights originating and terminating at El Salvador, A.28-29, and advertised for new, "preferably Salvadoran," pilots. A.7, 29.

On December 29, 1983, TACA "notified" its current pilots—solely through an announcement in Spanish in a Salvadoran newspaper, ALPA Ex. 13 [3]—that it would no longer recognize or negotiate with ALPA and that they would have until December 30 to accept nonnegotiable individual contracts, providing substantially lower wages (in Salvadoran rather than U.S. currency), requiring longer hours, and eliminating critical existing contractual benefits (including vacation, sick-leave, grievance procedures, and minimum pay protections), "or lose their employment with TACA." A.7, 29-30. TACA claimed its actions were dictated by Article 110 of El Salvador's new constitution, which provided only that "Salvadoran public service companies will have their work center and base of operations in El Salvador." A.6.

B. The District Court found that TACA's actions would extinguish the collective bargaining agreement and relationship which had evolved over 20 years and "wholly divest the pilots" of vital rights and protections "which cannot be compensated solely in monetary terms," A.20, in violation of Section 2, First, Second, Third, Fourth and Seventh, and Sections 5 and 6 of the Act. A.19-20.

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[3] All other Company notices to pilots are provided in New Orleans, R. Vol. 3, pp. 36-37. Many TACA pilots do not speak Spanish. R. Vol. 3, pp. 78-79.

The Court held that a 1982 Air Transport Agreement ("A.T.A.") between El Salvador and the United States, A.39, behind which TACA sought to shield its conduct, "does not . . . purport . . . to grant its approval to the proposed abrogation . . . or possible violation of American laws, public policy, or vested contractual rights." A.31. Nor could TACA, based upon the new Salvadoran constitution and asserted governmental directives, establish "act of state" or "foreign compulsion" defenses, because TACA violated American law on American soil, no adjudication of the validity of El Salvador's acts was involved, and overriding American interests were at stake. A.20-22, 33. "To effectuate the provisions of the Railway Labor Act, and to prevent immediate and irreparable injury . . . and to protect the public interests," A.20, the Court issued a preliminary and permanent injunction. A.24.

The Court of Appeals fully affirmed, finding "no merit in any contention advanced" by TACA. A.5. The Court held that TACA's present conduct, like its nearly identical actions enjoined over a decade before, *Ruby* v. *TACA International Airlines, S.A.*, 439 F.2d 1359 (5th Cir. 1971), A.5-6, was clearly violative of the Act, A.7; that the plain language of the A.T.A. establishes that it was not intended to replace or suspend relevant domestic labor law, including the Railway Labor Act, or to provide for arbitration of disputes between private parties like TACA and ALPA, A.9-10; and that neither the act of state doctrine nor foreign compulsion defense would bar an injunction, because TACA is fully subject to the Railway Labor Act, the validity of El Salvador's acts or laws was not in issue, sensitive areas of international relations were not implicated, and TACA's conduct "directly affect[ed] interests located within the United States and contravene[d] fundamental principles of American labor policy." A.15; 13-16. The Court emphasized that "collective bargaining agreements are a cornerstone of our national labor policy," A.16, and

"essential threads of its fabric," A.7, which could only be altered "in accordance with the substantive law and procedures set forth in the Railway Labor Act and other relevant domestic laws." A.16.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

I. The Decisions Below That TACA Violated the Railway Labor Act Are Consistent With the Opinions of This Court.

The Courts below followed this Court's precedents in concluding that TACA violated Sections 2, 5 and 6 of the Railway Labor Act, 45 U.S.C. §§ 152, 155, 156, by refusing to recognize and bargain with ALPA and unilaterally attempting to relocate the pilot base to El Salvador, abrogate the collective bargaining agreement, and impose new terms and conditions of employment. *Detroit and Toledo Shore Line Railroad* v. *United Transportation Union*, 396 U.S. 142, 150-53 (1969); *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, 378 (1969); *Virginian Ry.* v. *System Federation No. 40*, 300 U.S. 515, 543-45 (1937); *Texas & N.O.R.* v. *Brotherhood of Railway & Steamship Clerks*, 281 U.S. 548, 565-70 (1930). The petition does not contend otherwise.

II. The Decisions Below, Construing the Plain Language of the Air Transport Agreement as Neither Sanctioning TACA's Railway Labor Act Violations Nor Divesting Federal Courts of Jurisdiction Over This Dispute, Are Consistent With Rulings of This Court and Do Not Merit Review.

This Court has instructed that international agreements, like any other agreements, are to be interpreted according to their plain meaning absent a clear indication that the parties intend otherwise, *Maximov* v. *United States*, 373 U.S. 49, 54 (1963), and that statutes and treaties should be construed, insofar as possible, as con-

sistent and harmonious. *United States* v. *Lee Yen Tai*, 185 U.S. 213, 221-22 (1902).[4]

Applying these precepts, the Fifth Circuit concluded that "[t]he express language of the Air Transport Agreement reflects that the parties did not intend the agreement to replace relevant domestic labor law," A.9, or to suspend application of the Railway Labor Act. *Id.*; *accord*, A.31. Under the A.T.A., one nation's designated air carrier may establish offices and maintain personnel within the other nation only "in accordance with" the host country's "laws and regulations . . . relating to entry, residence and employment." A.9; A.46, Art. 8, § 2. Other provisions similarly require adherence to the host country's laws. A.44, Art. 5, §§ 1, 2.

As the Courts below found, nothing in the A.T.A. suggests that a controversy between private entities (here TACA and ALPA) which are not parties to the Agreement, is to be settled by the A.T.A.'s dispute resolution provisions. A.10. *See* A.53-54, Arts. 13, 14. The mere invocation of the A.T.A. in "communications" from the Salvadoran foreign ministry did not, as TACA suggests, Pet., pp. 10, 12, 14, divest the Courts below of jurisdiction to determine whether the A.T.A. affected their consideration of the ALPA-TACA labor dispute. *See* Re-

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[4] Whether or not the A.T.A. is a treaty, Pet., pp. 10-12, is irrelevant to resolution of the dispute. A.9 n.1. Even if the A.T.A. were a treaty (*cf. Weinberger* v. *Rossi*, 456 U.S. 25, 36 (1982), Pet., pp. 10-11, holding only that legislative history signaled Congressional intent to include specific executive agreements within the term "treaty" as used in the statute at issue), it is fully consistent with the Railway Labor Act, A.9 n.1, and, in any event, could not retroactively abrogate preexisting contractual rights, such as those embodied in the 1979 TACA-ALPA collective bargaining agreement. *Board of County Commissioners of Dade County, Florida* v. *Aerolineas Peruanasa, S.A.*, 307 F.2d 802, 807 and n.4 (5th Cir. 1962), *cert. denied*, 371 U.S. 961 (1963); *DeMauro Construction Corp.* v. *United States*, 568 F.2d 1322, 1329 (Ct. Cl. 1978).

statement (2d) Foreign Relations Law of the United States ("Restatement"), § 150 (1965); *cf. John Wiley and Sons, Inc.* v. *Livingston*, 376 U.S. 543, 546-47 (1964) (whether particular dispute is arbitrable is for courts to decide). Moreover, by enjoining TACA's effort to unilaterally abrogate the TACA-ALPA collective bargaining agreement, the Courts below have "given full effect" to a freely negotiated contract consistent with *M/S Bremen* v. *Zapata Off-Shore Co.*, 407 U.S. 1, 12-13, 15 (1972), and *Lauritzen* v. *Larsen*, 345 U.S. 571, 588-89 (1953), cited in Petition, pp. 14-15, 25.

III. The Decisions Below, Refusing on the Specific Facts of This Case to Excuse TACA's Violations of the Railway Labor Act on Act of State or Foreign Compulsion Grounds, Are in Accord With the Decisions of This Court and Other Circuits and Do Not Merit Review.

A. TACA's petition rests on incorrect assertions that the injunction entered against it invalidates El Salvador's "constitutional requirements" and divests that country of its "legitimate interests." Pet., pp. 16-17. Resolution of the ALPA-TACA dispute neither necessitated nor involved any inquiry into the validity of El Salvador's constitution, laws or policies by the Courts below, A.11, 14, 20; hence, they correctly held that the act of state doctrine would not bar an injunction in this case. A.13, 20. *See, e.g., United States* v. *Sisal Sales Corp.*, 274 U.S. 268, 276 (1927); *Industrial Investment Development Corp.* v. *Mitsui & Co.*, 594 F.2d 48, 49 (5th Cir. 1979), *cert. denied*, 445 U.S. 903 (1980); *Timberlane Lumber Co.* v. *Bank of America, N.T. & S.A.*, 549 F.2d 597, 605-08 (9th Cir. 1976); *Garcia* v. *Chase Manhattan Bank, N.A.*, 735 F.2d 645, 649-50 (2d Cir. 1984). The act of state doctrine has consistently been held to apply only where resolution of the issues presented required examination or adjudication of another country's laws, conduct or motivations, as the cases cited by TACA, Pet., pp.

17-18, make clear.[5] There was no occasion for any such inquiry in this case.

As the Courts below concluded, any effort within the United States by TACA, purportedly in reliance on the Salvadoran constitution, to unilaterally alter the status quo by relocating the pilot base from its locus of 35 years and abrogating the TACA-ALPA collective bargaining agreement—thereby affecting interests which are "clearly located in the United States," A.14-15—would directly contravene the Railway Labor Act and "fundamental principles of American labor policy." A.15, 20. Under such circumstances, American courts will, as the Courts below did, require the private party defendant to comply with American law and decline to give extraterritorial effect to the foreign decree. *See, e.g., Sisal Sales Corp.*, 274 U.S. at 276 (foreign laws did not immunize antitrust violations in U.S. by parties subject to U.S. jurisdiction); *Tabacalera Severiano Jorge, S.A.* v. *Standard Cigar Co.*, 392 F.2d 706, 715-16 (5th Cir.), *cert. denied*, 393 U.S. 924 (1968) (Cuban government confiscation

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[5] *Underhill* v. *Hernandez*, 168 U.S. 250, 252 (1897) (acts of Venezualan military commander challenged); *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 439 (1964) (validity of Cuba's expropriation at issue); *Compania de Gas de Nuevo Laredo, S.A.* v. *Entex, Inc.*, 686 F.2d 322, 326 (5th Cir. 1982), *cert. denied*, 460 U.S. 1041 (1983) (inquiry into motivations of Mexican government required); *Hunt* v. *Mobil Oil Corp.*, 550 F.2d 68, 72 (2d Cir.), *cert. denied*, 434 U.S. 984 (1977) (validity of Libya's nationalization of oil fields at stake); *International Association of Machinists* v. *Organization of Petroleum Exporting Countries*, 649 F.2d 1354, 1361 (9th Cir. 1981), *cert. denied*, 454 U.S. 1163 (1982) (requiring adjudication of actions of OPEC nations); *Clayco Petroleum Corp.* v. *Occidental Petroleum Corp.*, 712 F.2d 404, 406 (9th Cir. 1983), *cert. denied*, 104 S.Ct. 703 (1984) (requiring scrutiny of foreign state's award of oil rights, allegedly induced by bribes). *See also Occidental of Umm al Qaywayn, Inc.* v. *A Certain Cargo of Petroleum*, 577 F.2d 1196, 1201 and n.7 (5th Cir. 1978), *cert. denied*, 442 U.S. 928 (1979) (suit dismissed because presented nonjusticiable political question requiring resolution of territorial dispute between foreign sovereigns).

could not extinguish debt located in U.S.); *Maltina Corp.* v. *Cawy Bottling Co.*, 462 F.2d 1021, 1030 (5th Cir.), *cert. denied*, 409 U.S. 1060 (1972) (Cuba's dissolution of Cuban corporation did not deprive former owners of rights to U.S. trademark); *Garcia*, 735 F.2d at 649-50 (Cuba's confiscation of bank funds did not extinguish bank's obligation to honor certificates of deposit presented for payment outside Cuba); *Republic of Iraq* v. *First National City Bank*, 353 F.2d 47, 51 (2d Cir. 1965), *cert. denied*, 382 U.S. 1027 (1966) (Iraq's confiscatory ordinance denied enforcement against New York custodian account).

The rulings below did not "denigrate the interest of El Salvador," A.14,[6] challenge El Salvador's "control" of TACA, Pet., pp. 3, 16, or inject the judiciary into sensitive areas of international relations, A.14,[7] through adjudication of this labor dispute between a union and a commercial airline.[8] Instead, the injunction insured only that TACA—"a private party who voluntarily chose to engage in business within the territorial confines of the United States," A.14, thereby becoming "subject to all relevant domestic laws," *id.*; *see Restatement*, §§ 17, 39; *The Schooner Exchange* v. *McFaddon*, 11 U.S. (7 Cranch) 116, 136 (1812); *Laker Airways* v. *Sabena, Belgian World Airlines*, 731 F.2d 909, 921-25 (D.C. Cir. 1984)—complied with "the substantive law and procedures set forth in the Railway Labor Act and other relevant do-

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[6] Contrary to the Petition, p. II, El Salvador is not a party in this case. A.14. Neither is the United States.

[7] Communiques of a foreign government do not, as TACA asserts, Pet., pp. 6-8, require judicial inaction. *Cf. Sabbatino*, 376 U.S. at 411, 420, and *Occidental of Umm*, 577 F.2d at 1204 (U.S. executive branch urged judicial abstention). Moreover, any professed Salvadoran concern with a permanent bar on relocation of the pilot base, Pet., p. 7, was misplaced. A.16.

[8] Nor, contrary to TACA's assertion, Pet., p. 19, did the Fifth Circuit base its ruling on the "purely commercial" exception to the act of state doctrine. *See* A.11-12 n.2.

mestic laws," A.16, before attempting to relocate its pilots or otherwise alter the status quo. *Id. See SEC* v. *Banca Della Svizzera Italiana*, 92 F.R.D. 111, 119 (S.D.N.Y. 1981) (foreign company, which voluntarily entered American markets, could not excuse its violations of American law by claiming they were compelled by foreign law).

B. TACA's asserted foreign compulsion defense was similarly rejected only after evaluation of the appropriate considerations. A.15-16; Restatement, § 40; *In re Grand Jury Proceedings* v. *Field*, 532 F.2d 404, 407 n.5 (5th Cir.), *cert. denied*, 429 U.S. 940 (1976); *United States* v. *First National City Bank*, 396 F.2d 897, 901-02 (2d Cir. 1968); *United States* v. *Vetco, Inc.*, 691 F.2d 1281, 1288 (9th Cir.), *cert. denied*, 454 U.S. 1098 (1981). The determinations below that the vital American interests at stake ("fundamental principles of American labor policy," A.16; *also* A.7, 19, 33)[9] far outweighed any concerns asserted by El Salvador, Pet., p. 19, and that the grievous harm the pilots would suffer from TACA's actions (loss of critical rights and protections secured under American law through many years of dedicated service to TACA, A.20, 32), was greater than any speculative hardship to TACA if it complied with American law, Pet., p. 23,[10] were thoroughly grounded

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[9] The pertinent act of state and foreign compulsion authorities, cited in this Opposition, reject TACA's assertion, Pet., p. 15, that the decisions below disserved United States interests by requiring a private foreign corporation doing business in this country to comply with American law on American soil.

[10] The record revealed no sanctions imposed or threatened by El Salvador against TACA with respect to the present controversy. After an injunction in 1969 required TACA's compliance with the Railway Labor Act in the face of similar Salvadoran directives, A.5-6, the threatened sanctions, ALPA Ex. 10, were never imposed. However, even a real probability of sanctions will not excuse compliance with American law where, as here, significant American interests are implicated. *E.g., In re Grand Jury Proceedings*, 532 F.2d at 407, 410; *First National City Bank*, 396 F.2d at 904-05; *Banca Della Svizzera*, 92 F.R.D. at 118.

on the facts of this case, and are not, as TACA suggests, Pet., pp. 23-24, undermined by TACA's Salvadoran citizenship. *See In re Grand Jury Proceedings*, 532 F.2d at 407, 409; *Linseman* v. *World Hockey Association*, 439 F.Supp. 1315, 1324-25 (D. Conn. 1977).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

PERTINENT STATUTORY PROVISIONS

Railway Labor Act, 45 U.S.C. §§ 151 *et seq.*

Section 2, 45 U.S.C. § 152, First, Second, Third, Fourth, Seventh:

> First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.
>
> Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.
>
> Third. Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided,* That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

Section 5, 45 U.S.C. § 155:

First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use is best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 160 of this title) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 160 of this title, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Section 6, 45 U.S.C. § 156:

> Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or a proffer of the services of the Mediation Board.

Section 201, 45 U.S.C. § 181:

> All of the provisions of sections 151 to 152 and 154 to 163 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.